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9  
10 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 **Brian Whitaker,**

12 Plaintiff,

13 v.

14 **Paul Steiner**, in individual and  
15 representative capacity as trustee of  
16 the Ann Hamburger Trust dated  
17 August 29, 1974;  
**Rooster & Rice III, LLC**, a  
California Limited Liability  
Company; and Does 1-10,

18 Defendants.

19  
20 **Case No.**

21 **Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

22 Plaintiff Brian Whitaker complains of Paul Steiner, in individual and  
23 representative capacity as trustee of the Ann Hamburger Trust dated August  
24 29, 1974; Rooster & Rice III, LLC, a California Limited Liability Company;  
25 and Does 1-10 ("Defendants"), and alleges as follows:

26  
27 **PARTIES:**

28 1. Plaintiff is a California resident with physical disabilities. He is  
substantially limited in his ability to walk. He suffers from a C-4 spinal cord  
injury. He is a quadriplegic. He uses a wheelchair for mobility.

1       2. Defendant Paul Steiner, in individual and representative capacity as  
2 trustee of the Ann Hamburger Trust dated August 29, 1974, owned the real  
3 property located at or about 125 Kearny Street, San Francisco, California, in  
4 September 2019.

5       3. Defendant Paul Steiner, in individual and representative capacity as  
6 trustee of the Ann Hamburger Trust dated August 29, 1974, owns the real  
7 property located at or about 125 Kearny Street, San Francisco, California,  
8 currently.

9       4. Defendant Rooster & Rice III, LLC owned Rooster & Rice located at or  
10 about 125 Kearny Street, San Francisco, California, in September 2019.

11      5. Defendant Rooster & Rice III, LLC owns Rooster & Rice (“Restaurant”)  
12 located at or about 125 Kearny Street, San Francisco, California, currently.

13      6. Plaintiff does not know the true names of Defendants, their business  
14 capacities, their ownership connection to the property and business, or their  
15 relative responsibilities in causing the access violations herein complained of,  
16 and alleges a joint venture and common enterprise by all such Defendants.  
17 Plaintiff is informed and believes that each of the Defendants herein,  
18 including Does 1 through 10, inclusive, is responsible in some capacity for the  
19 events herein alleged, or is a necessary party for obtaining appropriate relief.  
20 Plaintiff will seek leave to amend when the true names, capacities,  
21 connections, and responsibilities of the Defendants and Does 1 through 10,  
22 inclusive, are ascertained.

23

24      **JURISDICTION & VENUE:**

25      7. The Court has subject matter jurisdiction over the action pursuant to 28  
26 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
27 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

28      8. Pursuant to supplemental jurisdiction, an attendant and related cause

1 of action, arising from the same nucleus of operative facts and arising out of  
2 the same transactions, is also brought under California's Unruh Civil Rights  
3 Act, which act expressly incorporates the Americans with Disabilities Act.

4 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
5 founded on the fact that the real property which is the subject of this action is  
6 located in this district and that Plaintiff's cause of action arose in this district.  
7

8 **FACTUAL ALLEGATIONS:**

9 10. Plaintiff went to the Restaurant in September 2019 with the intention  
10 to avail himself of its goods, motivated in part to determine if the defendants  
11 comply with the disability access laws.

12 11. The Restaurant is a facility open to the public, a place of public  
13 accommodation, and a business establishment.

14 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
15 to provide accessible dining surfaces.

16 13. On information and belief, the defendants currently fail to provide  
17 accessible dining surfaces.

18 14. Plaintiff personally encountered these barriers.

19 15. By failing to provide accessible facilities, the defendants denied the  
20 plaintiff full and equal access.

21 16. The failure to provide accessible facilities created difficulty and  
22 discomfort for the Plaintiff.

23 17. The defendants have failed to maintain in working and useable  
24 conditions those features required to provide ready access to persons with  
25 disabilities.

26 18. The barriers identified above are easily removed without much  
27 difficulty or expense. They are the types of barriers identified by the  
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous  
2 alternative accommodations that could be made to provide a greater level of  
3 access if complete removal were not achievable.

4 19. Plaintiff will return to the Restaurant to avail himself of its goods and to  
5 determine compliance with the disability access laws once it is represented to  
6 him that the Restaurant and its facilities are accessible. Plaintiff is currently  
7 deterred from doing so because of his knowledge of the existing barriers and  
8 his uncertainty about the existence of yet other barriers on the site. If the  
9 barriers are not removed, the plaintiff will face unlawful and discriminatory  
10 barriers again.

11 20. Given the obvious and blatant nature of the barriers and violations  
12 alleged herein, the plaintiff alleges, on information and belief, that there are  
13 other violations and barriers on the site that relate to his disability. Plaintiff will  
14 amend the complaint, to provide proper notice regarding the scope of this  
15 lawsuit, once he conducts a site inspection. However, please be on notice that  
16 the plaintiff seeks to have all barriers related to his disability remedied. See  
17 Doran v. 7-11, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
18 encounters one barrier at a site, he can sue to have all barriers that relate to his  
19 disability removed regardless of whether he personally encountered them).

20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
22 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 21. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
25 again herein, the allegations contained in all prior paragraphs of this  
26 complaint.

27 22. Under the ADA, it is an act of discrimination to fail to ensure that the  
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone  
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
3 § 12182(a). Discrimination is defined, inter alia, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,  
5 or procedures, when such modifications are necessary to afford  
6 goods, services, facilities, privileges, advantages, or  
7 accommodations to individuals with disabilities, unless the  
8 accommodation would work a fundamental alteration of those  
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is  
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
12 defined by reference to the ADA Standards.
- 13 c. A failure to make alterations in such a manner that, to the  
14 maximum extent feasible, the altered portions of the facility are  
15 readily accessible to and usable by individuals with disabilities,  
16 including individuals who use wheelchairs or to ensure that, to the  
17 maximum extent feasible, the path of travel to the altered area and  
18 the bathrooms, telephones, and drinking fountains serving the  
19 altered area, are readily accessible to and usable by individuals  
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 23. When a business provides facilities such as dining surfaces, it must  
22 provide accessible dining surfaces.

23 24. Here, accessible dining surfaces have not been provided.

24 25. The Safe Harbor provisions of the 2010 Standards are not applicable  
25 here because the conditions challenged in this lawsuit do not comply with the  
26 1991 Standards.

27 26. A public accommodation must maintain in operable working condition  
28 those features of its facilities and equipment that are required to be readily

1 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

2 27. Here, the failure to ensure that the accessible facilities were available  
3 and ready to be used by the plaintiff is a violation of the law.

4

5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
7 Code § 51-53.)

8 28. Plaintiff repleads and incorporates by reference, as if fully set forth  
9 again herein, the allegations contained in all prior paragraphs of this  
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
11 that persons with disabilities are entitled to full and equal accommodations,  
12 advantages, facilities, privileges, or services in all business establishment of  
13 every kind whatsoever within the jurisdiction of the State of California. Cal.  
14 Civ. Code § 51(b).

15 29. The Unruh Act provides that a violation of the ADA is a violation of the  
16 Unruh Act. Cal. Civ. Code, § 51(f).

17 30. Defendants’ acts and omissions, as herein alleged, have violated the  
18 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
19 rights to full and equal use of the accommodations, advantages, facilities,  
20 privileges, or services offered.

21 31. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
22 discomfort or embarrassment for the plaintiff, the defendants are also each  
23 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
24 (c).)

## **PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: October 9, 2019

CENTER FOR DISABILITY ACCESS

By:

*[Signature]*

Amanda Seabock, Esq.  
Attorney for plaintiff